



FEDERAL ELECTION COMMISSION  
WASHINGTON, D.C. 20463

R. Bruce Thompson, II, Esq.  
Parker Poe, Attorneys at Law  
Wells Fargo Capitol Center  
150 Fayetteville Street, Suite 1400  
Raleigh, NC 27601  
brucethompson@parkerpoe.com

**MAY 30 2017**

RE: MUR 6857  
Jerry Gappens  
Lucy Gappens  
New Hampshire Motor Speedway, Inc.  
Speedway Motorsports, Inc.

Dear Mr. Thompson:

On August 4, 2014, the Federal Election Commission ("Commission") notified your clients, Jerry Gappens, Lucy Gappens, New Hampshire Motor Speedway, Inc. ("NHMS"), and Speedway Motorsports, Inc. ("SMI"), of a complaint filed by Judy Brown alleging that your clients violated the Federal Election Campaign Act of 1971, as amended (the "Act"), and provided them with a copy of the Brown complaint. On September 27, 2016, the Commission notified you of a complaint filed by Lawson Brouse alleging that your clients violated the Act, and provided you with a copy of the Brouse complaint.

After reviewing the allegations contained in the complaints, and the responses you submitted on behalf of your clients, the Commission on April 19, 2017, found that there is reason to believe that Jerry Gappens violated 52 U.S.C. § 30118(a), a provision of the Act. The Commission found that there is no reason to believe that SMI violated 52 U.S.C. § 30118(a) and found that there is no reason to believe that Lucy Gappens violated the Act. Further, there was an insufficient number of votes for the Commission to find reason to believe that NHMS violated 52 U.S.C. § 30118(a). The Commission also closed the file in this matter as to Lucy Gappens, SMI and NHMS.

Enclosed is the Factual and Legal Analysis that sets forth the basis for the Commission's findings as to Jerry Gappens, Lucy Gappens, and SMI. The Commission reminds Lucy Gappens, SMI and NHMS that the confidentiality provisions of 52 U.S.C. § 30109(a)(12)(A) remain in effect, and that this matter is still open with respect to other respondents. A Statement of Reasons providing the basis for the Commission's decision regarding NHMS will be forthcoming when the entire file in this matter closes. This matter will become part of the public record within 30 days after the entire file is closed with respect to all respondents involved.

Please note that Mr. Gappens has a legal obligation to preserve all documents, records and materials relating to this matter until such time as he is notified that the Commission has closed the file in this matter as to him. See 18 U.S.C. § 1519.

In order to expedite the resolution of this matter, the Commission has authorized the Office of the General Counsel to enter into negotiations directed towards reaching a conciliation agreement with Mr. Gappens in settlement of this matter prior to a finding of probable cause to believe. Pre-probable cause conciliation is not mandated by the Act or the Commission's regulations, but is a voluntary step in the enforcement process that the Commission is offering to Mr. Gappens as a way to resolve this matter at an early stage and without the need for briefing the issue of whether or not the Commission should find probable cause to believe that Mr. Gappens violated the law.

If Mr. Gappens is interested in engaging in pre-probable cause conciliation, please contact Delbert K. Rigsby, the attorney assigned to this matter, at (202) 694-1650 or drigsby@fec.gov, within seven days of receipt of this letter. During conciliation, Mr. Gappens may submit any factual or legal materials that he believes is relevant to the resolution of this matter. Because the Commission only enters into pre-probable cause conciliation in matters that it believes have a reasonable opportunity for settlement, we may proceed to the next step in the enforcement process if a mutually acceptable conciliation agreement cannot be reached within sixty days. See 52 U.S.C. § 30109(a), 11 C.F.R. Part 111 (Subpart A). Conversely, if Mr. Gappens is not interested in pre-probable cause conciliation, the Commission may conduct formal discovery in this matter or proceed to the next step in the enforcement process. Please note that once the Commission enters the next step in the enforcement process, it may decline to engage in further settlement discussions until after making a probable cause finding.

Pre-probable cause conciliation, extensions of time, and other enforcement procedures and options are discussed more comprehensively in the Commission's "Guidebook for Complainants and Respondents on the FEC Enforcement Process," which is available on the Commission's website at [http://www.fec.gov/em/respondent\\_guide.pdf](http://www.fec.gov/em/respondent_guide.pdf).

In the meantime, this matter will remain confidential in accordance with 52 U.S.C. § 30109(a)(4)(B) and 52 U.S.C. § 30109(a)(12)(A) unless Mr. Gappens notifies the Commission in writing that he wishes the matter to be made public. Please be advised that, although the

17044432012

MUR 6857  
R. Bruce Thompson, II, Esq.  
Page 3

Commission cannot disclose information regarding an investigation to the public, it may share information on a confidential basis with other law enforcement agencies.<sup>1</sup>

We look forward to your response.

On behalf of the Commission,



Steven T. Walther  
Chairman

Enclosure

Factual and Legal Analysis for Jerry Gappens, Lucy Gappens and Speedway Motorsports, Inc.

<sup>1</sup> The Commission has the statutory authority to refer knowing and willful violations of the Act to the Department of Justice for potential criminal prosecution, 52 U.S.C. § 30109(a)(5)(C), and to report information regarding violations of law not within its jurisdiction to appropriate law enforcement authorities. *Id.* § 30107(a)(9).

1  
2  
3  
4  
5  
6  
7  
8  
9  
10  
11  
12  
13  
14  
15  
16  
17  
18  
19  
20  
21  
22  
23  
24  
25  
26  
27  
28

**FEDERAL ELECTION COMMISSION**

**FACTUAL AND LEGAL ANALYSIS**

RESPONDENTS: Jerry Gappens  
Speedway Motorsports, Inc.  
Lucy Gappens

MUR 6857

**I. INTRODUCTION**

The Complainants<sup>1</sup> allege that New Hampshire Motor Speedway, Inc. ("NHMS"), or its parent company, Speedway Motorsports, Inc. ("SMI"), paid for a campaign event for Marilinda Garcia for Congress ("Committee") that was held at NHMS in June 2014, and thus made a corporate contribution in violation of the Federal Election Campaign Act of 1971, as amended (the "Act").

Respondents acknowledge that NHMS paid for the Committee event. Accordingly, as discussed below, the Commission found that Jerry Gappens, an officer of NHMS, impermissibly consented to the making of NHMS's corporate contribution in violation of 52 U.S.C. § 30118(a). Additionally, the Commission found that there is no reason to believe that SMI violated 52 U.S.C. § 30118(a). Finally, the Commission found that there is no reason to believe that Lucy Gappens violated the Act.

**II. FACTUAL AND LEGAL ANALYSIS**

**A. Factual Background**

Marilinda Garcia was a candidate for election in the Second Congressional District of New Hampshire in 2014. The Complainants state that the Committee held a "Race for Congress" fundraiser event at NHMS ("the event"), and the expenses related to the event included rental of the venue, live music, food, a raffle prize of two "VIP Access" tickets to an

---

<sup>1</sup> There were two nearly identical complaints filed against the Respondents. For purpose of convenience, the Commission considered the complaints together.

1 upcoming NASCAR race, and, for "Gold Member" ticket holders, pace car rides around the  
2 speedway.<sup>2</sup> The Complainants allege that the Committee did not report any receipts or  
3 disbursements related to this event on its disclosure reports, other than in-kind contributions from  
4 Jerry Gappens and his wife, Lucy Gappens, for \$2,600 and \$2,320, respectively.<sup>3</sup> The  
5 Complaints identify Jerry Gappens as Executive Vice President and General Manager of SMI,  
6 the parent company of NHMS.<sup>4</sup> Further, the Complaints maintain that Jerry Gappens does not  
7 own NHMS, and SMI cannot legally make a contribution to a federal candidate.<sup>5</sup> Thus, the  
8 Complaints, reasonably construed, allege that SMI, NHMS's corporate parent, and not the  
9 Gappens, made the in-kind contributions, and such corporate contributions are prohibited under  
10 the Act.

11 SMI, Jerry Gappens and Lucy Gappens ("Joint Respondents") responded jointly to the  
12 Complaints asserting that SMI is a corporation, its principal place of business is in Charlotte,  
13 North Carolina, it owns NHMS and other race tracks, and it was unaware of the event until it  
14 received the Brown Complaint.<sup>6</sup> The Joint Respondents contend that SMI did not intend to  
15 contribute food and race tickets to the Committee, NHMS did not sponsor the event, and there  
16 was a misunderstanding between Jerry Gappens, NHMS's Executive Vice President and General

<sup>2</sup> Judy Brown Compl. at 1 and Ex. 1; Lawson Brouse Compl. at 1 and Ex. 1. The tickets were \$100 for "Gold Members," \$35 for "Blue Members" and \$15 for "kids." See Ex. 1 of both Complaints.

<sup>3</sup> Brown Compl. at 1 and Brouse Compl. at 1. The Committee's original 2014 July Quarterly Report discloses that the contributions from the Gappens were "in-kind." See 2014 July Quarterly Report at 16-17 (July 15, 2014). The Committee's Amended 2014 July Quarterly Report discloses that these contributions were for "event tickets, food and beverages." See Amended 2014 July Quarterly Report at 17 (Sept. 17, 2014).

<sup>4</sup> Brown Compl. at 1 and Brouse Compl. at 1.

<sup>5</sup> *Id.*

<sup>6</sup> Joint Resp. to Brown Compl. at 1 and Joint Resp. to Brouse Compl. at 1. NHMS is incorporated in the State of New Hampshire.

1 Manager, and the Committee as to who was responsible for the food and race tickets.<sup>7</sup> The Joint  
2 Respondents explain that NHMS did not send an invoice to the Committee, as promised, and  
3 Gappens left his position with NHMS in September 2015.<sup>8</sup> The Joint Respondents assert that on  
4 October 27, 2016, NHMS delivered an invoice for \$4,485 to the Committee for certain event  
5 costs.<sup>9</sup> The Joint Respondents maintain that Lucy Gappens did not provide an in-kind  
6 contribution to the Committee, did not attend the event, and was not aware of it.<sup>10</sup>

7 Information available to the Commission indicates that Jerry Gappens set up the event at  
8 NHMS, and he agreed to donate certain event costs. There is also information available that  
9 NHMS sent an email to the Committee stating that all donations were compliments of Jerry  
10 Gappens, and "compliments of Jerry Gappens" was printed on the tickets given to campaign  
11 supporters.

12 **B. Legal Analysis**  
13

14 The Act defines "contribution" to include "any gift, subscription, loan, advance, or  
15 deposit of money or anything of value made by any person for the purpose of influencing any  
16 election for Federal office."<sup>11</sup> "Anything of value" includes all in-kind contributions and, unless  
17 otherwise exempted, the provision of any goods or services without charge or at a charge that is  
18 less than the usual and normal charge for such goods or services.<sup>12</sup>  
19

---

<sup>7</sup> Joint Resp. to Brown Compl. at 2 and Joint Resp. to Brouse Compl. at 2.

<sup>8</sup> Joint Resp. to Brouse Compl. at 2.

<sup>9</sup> *Id.* and attached invoice.

<sup>10</sup> Joint Resp. to Brown Compl. at 2 and Joint Resp. to Brouse Compl. at 2.

<sup>11</sup> 52 U.S.C. § 30101(8)(A)(i).

<sup>12</sup> 11 C.F.R. § 100.52(d)(1).

1 The Act and Commission regulations prohibit corporations from making contributions to  
2 a federal political committee (other than independent expenditure-only political committees)<sup>13</sup>  
3 and further prohibit any officer or director of any corporation from consenting to any such  
4 contribution by the corporation.<sup>14</sup>

5 The available information indicates that NHMS, not Jerry and Lucy Gappens, made an  
6 in-kind contribution to the Committee of certain event costs because NHMS's corporate  
7 resources were used for this campaign event.

8 Based upon available information, it appears that Jerry Gappens, an Executive Vice  
9 President and General Manager of NHMS,<sup>15</sup> was instrumental in NHMS's contribution because  
10 he agreed to donate certain event costs. It appears, then, that as an officer of NHMS, Jerry  
11 Gappens consented to NHMS's contribution to the Committee. Thus, the Commission found  
12 that there is reason to believe that Jerry Gappens violated 52 U.S.C. § 30118(a) by consenting to  
13 a corporate contribution.

14 SMI is the parent company of NHMS, and the Joint Responses assert that prior to the  
15 Complaints, SMI was unaware of the event, and the available information does not suggest that  
16 SMI was involved in the event. Therefore, the Commission found that there is no reason to  
17 believe that SMI violated 52 U.S.C. § 30118(a).

18 Finally, the Commission found that there is no reason to believe that Lucy Gappens  
19 violated the Act in this matter because the available information does not indicate she had any  
20 involvement here. It seems likely that \$2,320 of the total contribution was wrongly attributed to

<sup>13</sup> See Advisory Op. 2010-11 (Commonsense Ten) (citing *Citizens United v. FEC*, 558 U.S. 310, 359 (2010)).

<sup>14</sup> 52 U.S.C. § 30118(a); 11 C.F.R. § 114.2(b).

<sup>15</sup> NHMS's 2014 Annual Report filed with the New Hampshire Secretary of State's Office lists Jerry Gappens as an officer. 2014 Annual Report (Mar. 10, 2014) at <https://www.sos.nh.gov/imaging/14905448.pdf>.

- 1 her merely because she is married to Jerry Gappens, who was subject to the contribution limit of
- 2 \$2,600.

4-NOV-2010 10:10:10